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C O N F I D E N T I A L PANAMA 000749

SIPDIS

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TAGS: [PGOV](#) [PM](#) [PREL](#) [PTER](#) [VE](#)  
SUBJECT: PANAMA: DETAILS OF PARDON REVOCATION FOR POSADA  
AND 181 OTHERS

REF: A. A. PANAMA 542  
[1](#)B. B. PANAMA 556

Classified By: Classified by POLCOUNS Brian R. Naranjo for Reasons 1.4  
(b) and (d)

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SUMMARY  
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[1](#)1. (U) Post acquired a copy of the June 30 Supreme Court ruling that revoked the pardon of Luis Posada Carriles - who is accused of plotting the assassination of Fidel Castro - as well as three of Posada's accomplices and 178 others. The Panamanian Supreme Court acted to overturn what they saw as an Executive action that was outside the scope of the Executive's power to pardon individuals for "political crimes." The ruling overturned Executive Decrees No. 317 of August 25, 2004, No. 318 of August 26, 2004 and No. 321 of August 30, 2004, which pardoned a total of 182 persons for a variety of crimes.

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Pardons for Political Crimes Only  
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[1](#)2. (U) Former President Moscoso and Arnulfo Escalona Avila, ex-Minister of Government and Justice, violated Article 179, Number 12 (now Number 184) and Number 22 of the Constitution by ignoring the fact the President is given the power to pardon only for "political crimes" and not for "common crimes," according to the ruling. For common crimes, the law specifically allows the Executive two avenues: reduction of sentence and a decree granting parole. Many of the individuals who received pardons included in the three decrees had been accused or convicted of common crimes, according to former Solicitor General Alma Montenegro de Fletcher, whose counsel is quoted in the Court's opinion. Further, Fletcher characterized the pardons as given in a "abusive and indiscriminate" manner.

[1](#)3. (U) The ruling acknowledged that the law did not include a clear determination of what should be understood as a "political crime," but proceeded to interpret them as: 1) crimes against the State's "internal legal capacity;" and 2) electoral crimes. They cited an extensive list of crimes that were not political crimes, including the possession of explosives, one of the charges against Posada.

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Pardoned Without a Crime  
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¶4. (U) Some individuals pardoned by former President Moscoso had been neither accused nor convicted of a crime at the time of the pardons. The ruling notes that in order for there to be a pardon, had to have been a crime and a condemnation, so any pardons given to non-guilty persons were thus invalid. Further, the ruling pointed out that to pardon individuals before conviction would be to characterize them as "political delinquents pardoned by the Executive Branch," a violation of their rights to a presumption of innocence.

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"Original state" not Double Jeopardy  
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¶5. (U) The ruling has a "retroactive effect" and should restore each case at issue to the "original state" in which it was found at the time of the pardons, but not necessarily include a new legal process for the same criminal action. All legal processes that had resulted from the pardons did not have legal support and all legal processes as well had to return to their "natural state." The ruling directly addresses the issue of double jeopardy, stating that because the pardons were unconstitutional, returning the cases to their "original state" does not constitute double jeopardy. Article 32 of the Constitution says that no one shall be judged "more than once for the same criminal cause." Additionally, under Panamanian law, an Executive pardon forever extinguishes both the criminal act and the punishment

in the eyes of the law. However, the ruling states that it "restores the procedural situation of those pardoned to the natural state they were in" before the "unconstitutional nullity" (the pardons) took place. Thus, in the opinion of the Court, this decision does not violate double jeopardy because the pardons violated the Constitution.

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COMMENT  
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¶6. (C) The ruling reads as a clear attempt by the Court to assert control over a out-of-control President who abused her power to pardon. The large number of persons pardoned in three different waves, for a large variety of crimes, and some pardoned from no crime (or accusation) at all, clearly raised the Court's concern. There is no indication in the ruling that the Court wished to single out Posada, his accomplices, or any other pardoned individual. Posada is not mentioned at all except in a listing of pardoned individuals.

A copy of the ruling in Spanish can be obtained by sending an e-mail to Kellee Farmer at farmerk@state.gov.

MESA